Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

THERESA REALI, et al.,

Petitioners,

vs.

FEMINIST WOMEN'S HEALTH CENTER,

Respondent.

On Petition For Writ Of Certiorari
To The Court Of Appeal Of California

RESPONDENT'S BRIEF IN OPPOSITION

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TO THE HONORABLE SUPREME COURT:

The Respondent, Feminist Women's Health Center (FWHC), respectfully asks this Court to deny the Petition for Certiorari submitted by Petitioners.

REPORT OF OPINIONS BELOW, JURISDICTION AND CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Rule 24, Supreme Court Rules, and Paragraph .2 thereof, Respondent adopts Petitioners' Report of Decisions Below, Jurisdiction and Statutes Involved, with the exception of two additional provisions of the California Constitution.

Article 1, section 1 of the California Constitution provides:

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Cal. Const., art. 1, § 1.

Article 1, section 2, of the California Constitution provides, in relevant part:

> (a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

Cal. Const., art. 1, § 2.

STATEMENT OF THE CASE

Respondent is a nonprofit corporation operating four medical clinics in Northern California, including one located on J Street in Sacramento (hereafter the clinic) which is the subject of the injunction in this case. At the time of the events at issue, the clinic was open six days a week and provided gynecological health care, birth control services, pregnancy testing and screening, sexually transmitted disease testing and screening, and abortions. The clinic is on the second floor of a medical building in which several doctors' offices and a pharmacy are also located. The front entrance of the building opens onto a sidewalk running parallel to J Street along the entire length of the building and extending from the front of the building to J Street. The back entrance opens onto a 40-space parking lot to which there is access from I Street. Signs posted in the parking lot state that it is reserved for the use of tenants of the building and their customers and that trespassers will be prosecuted under Penal Code section 602 (trespassing). (Pet. at 4a).

Petitioners are Jay Baggett, Don Blythe, Murray Lewis, Theresa Marie Reali and John Stoos. (John Walker and Operation Rescue were defendants below, but since the appellate court reversed the trial court's award of attorney's fees as to them on the ground that state law precludes an award of attorney's fees against a defaulting defendant where a demand for such fees was not included in the complaint, they did not petition herein.) According to the record, Operation Rescue is a national anti-abortion group whose members are willing to risk arrest in an effort to blockade abortion clinics and make it

impossible for patients to enter medical facilities where abortions are performed. (Pet. at 5a).

The clinic opened in June 1987. Petitioners commenced anti-abortion demonstrations there in early 1988. Every Saturday, one or more of the petitioners and others would arrive at the clinic and use various techniques in an effort to counsel patients and persuade or stop them from submitting to abortions. These techniques included picketing in front of the medical building and in the parking lot, distributing anti-abortion literature both inside and outside of the medical building, blocking or impeding entrance to the building and the parking lot, hitting the hoods of cars entering the parking lot, blocking the doors of arriving patients' vehicles in the parking lot so that patients had difficulty getting out and entering the clinic, following patients in order to give them literature even if the patients indicated they were not interested, stepping into the paths of patients as they approached the clinic, urging patients not to "kill" their babies, shouting "murder, murder, murder" at patients, and pointing cameras at them. (Pet. at 5a).

The anti-abortion demonstrations have caused problems for patients trying to enter the clinic. As previously noted, among other things demonstrators have blocked patients at the entrance to the medical building and have refused to leave. The clinic has received telephone calls from patients in nearby phone booths complaining they were unable to enter the clinic. When clinic staff offered to help and went out to escort those patients into the building, the patients sometimes could not be found. Other patients rescheduled appointments to avoid the

demonstrations and called the clinic to request escort assistance into the building. Several times, police assistance has been necessary to stop blocking of the parking lot and building entrance and other activities of the demonstrators. After the district attorney's office declined to prosecute petitioners who had been arrested for trespass, the parking lot "became a sort of battleground," and patients were unable to get out of their cars or enter the building without being subjected to the conduct summarized above. (Pet. at 5a-6a).

The noise made by picketing demonstrators and the confrontations and other activities initiated by petitioners and others at the clinic have upset and agitated clinic patients. In some instances, patients have been reduced to tears. This heightened level of anxiety has required that abortion patients receive greater amounts of medication and has lengthened the time necessary to perform abortion procedures, thereby increasing the risks to patients. Heightened anxiety of staff members, including the doctors performing abortions, has impaired their concentration, further increasing the risks to patients. (Pet. at 6a).

On January 6, 1989, respondent obtained a temporary restraining order imposing time, place and manner restrictions on the anti-abortion activities of petitioners as well as their agents, servants, employees and representatives. On March 6, 1989, the court granted respondent's motion for a preliminary injunction. *Id.*

After the temporary restraining order and preliminary injunction issued, anti-abortion activities at the clinic continued, including the use of cameras, bumping into and pushing aside "escorts" hired by the clinic to

assist patients in entering the building, following patients into restricted areas, blocking cars attempting to enter the parking lot, persisting in offering literature refused by patients, blocking passage on the sidewalk in front of the medical building, and picketing in restricted areas. *Id.*

Defendants John Walker and Operation Rescue did not appear, and a default judgment was entered against them. Respondent's application for a permanent injunction was tried against the remaining petitioners, and judgment was entered in respondent's favor for a permanent injunction prohibiting (1) any activity within a "speech free zone" defined as a rectangle extending from the front of the medical building to three feet short of the curb on J Street and twenty feet on either side of the front door, (2) blocking ingress and egress of clinic patients and staff on the sidewalk in front of the medical building, (3) yelling or otherwise producing loud noise which interferes with clinic operations, (4) photographing or videotaping clinic patients, visitors or staff, (5) recording license plate numbers of vehicles visiting the clinic, (6) entering the medical building parking lot, (7) interfering with automobiles entering or leaving the parking lot, and (8) inducing others to do any of the above. (Pet. at 7a).

Following trial, respondent moved for an award of attorney fees pursuant to Code of Civil Procedure section 1021.5. The court awarded $99,106.98 against all petitioners jointly and severally. *Id.*

SUMMARY OF ARGUMENT

I. This case presents no issue appropriate for the Court's exercise of discretionary jurisdiction as it does not conflict with any other opinions, chill first amendment rights, or prefer labor union demonstrators over anti-abortion demonstrators.

II. This case is completely consistent with *Madsen*, which does not require that a less restrictive prior injunction be issued before the final injunction is ordered.

III. The court below properly undertook an independent review of the record and correctly found that the evidence justified the injunction and the award of attorney fees.

IV. The decision in this case does not conflict with this court's doctrine of protecting mere advocacy speech.

V. The California Court of Appeal based its decision on independent and adequate state grounds, specifically the state constitution's right of privacy and the state statute authorizing the award of attorney fees in cases conferring a significant benefit upon the public.

REASONS FOR DENYING THE WRIT

The petitioners fail to satisfy criteria required for the grant of a Writ of Certiorari. The California appellate court, after twice undertaking an independent review of the record, properly decided that the injunction against unlawful conduct by petitioners that interfered with the rights of respondent health clinic and its patients respecting medical advice and abortion services, met the standards of *Madsen* and other opinions of this Court. The

award of attorney fees met the requirements of the state's public interest attorney fee statute, which is an analogue to the federal Civil Rights Attorney's Fee Act, 42 U.S.C. § 1988. Finally, the decision below complies fully with federal constitutional guarantees and is based on independent and adequate state grounds, specifically the California Constitution's guarantee of privacy and the state's public interest attorney fee statute.

I.

THE AWARD OF ATTORNEY FEES TO RESPONDENT NEITHER "CHILLS" PETITIONERS' FIRST AMENDMENT RIGHTS NOR FAVORS LABOR PICKETERS OVER ANTI-ABORTION DEMONSTRATORS.

Petitioners' claim that the award of attorney fees operates to chill their rights to free speech is unavailing because their conduct exceeded the protection afforded by the First Amendment to the United States Constitution and by article I, section 2 of the California Constitution, and interfered with the exercise by others of the constitutional right to abortion. (*Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood v. Wilson*, 234 Cal.App.3d 1662, 1670-1674 (1991); *Allred v. Shawley*, 232 Cal.App.3d 1489, 1501-1505 (1991); see also *Planned Parenthood v. Aakhus*, 14 Cal.App.4th 162, 175 (1993); *Chico Fem. Women's Hlth. Cr. v. Butte Glenn Med. S.*, 557 F.Supp. 1190, 1202-1204 (E.D. Cal. 1983).) " '[T]he First Amendment does not offer a sanctuary for violators. The same constitution that protects the defendants' right to free speech, also protects [plaintiff's] right to abortion services and the patients' rights to receive those services.' . . . " (*Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349 (3d Cir.

1989), *cert. den. McMonagle v. Northeast Women's Center, Inc.*, 493 U.S. 901 (1989), citation omitted.)

The record plainly shows that petitioners obstructed access to the medical building and parking lot. "[B]locking access to public and private buildings has never been upheld as a proper method of communication in an orderly society." (*New York State NOW v. Terry*, 886 F.2d 1339, 1364 (2d Cir. 1989).) Petitioners also attempted to prevent clients from getting out of their cars by standing in front of car doors. At other times, petitioners positioned themselves so that when a patient got out of her car she was pinned between her car and the adjacent vehicle. Once a patient was able to leave her vehicle, petitioners' efforts to frustrate the patient's attempt to get to the clinic continued. After patients indicated a lack of interest in the demonstrators' views and expressed a wish to be left alone, petitioners continued to thrust literature at them, yell at the patients, and even chase some of them down the sidewalk. On one occasion, petitioner Baggett thrust a sign in a patient's face and would have hit her in the head if she had not moved out of the way. On another occasion, petitioner Reali, who was inside the building, chased a tearful woman and thrust anti-abortion literature at her. Furthermore, petitioner Blythe assaulted escorts who were attempting to assist women in gaining access to the clinic. (Pet. at 30a).

Respondent sought the injunction due to this type of conduct. According to respondent's executive director and the clinic administrator, although the picketing had been going on for a year, court action was not pursued until petitioners aggressively harassed women seeking abortion services and actually came into the building.

After the temporary restraining order issued, and again after the preliminary injunction was granted, respondent attempted to settle this matter. Respondent offered to stipulate to making the injunction permanent so as to avoid the necessity and cost of trial and, in return, to modify the injunction to make it less objectionable to petitioners. When respondent's efforts were unsuccessful, the matter went to trial. The relief granted in the permanent injunction was not significantly different than that granted in the preliminary injunction, including the exclusion of petitioners from the parking lot. (Pet. at 31a).

Consequently, the attorney fees incurred by respondent were necessitated by petitioners' refusal to limit their conduct to that protected by the First Amendment to the United States Constitution and by article I, section 2 of the California Constitution. If petitioners had not engaged in unprotected conduct, respondent would not have initiated this action and, thus, petitioners would not have incurred the attorney fees in question.

The attorney fee award does not operate to chill petitioners' rights to freedom of speech because it does not prevent them from continuing to demonstrate and exercise their free speech rights within the lawful limits set forth in the injunction. No legitimate claim can be made that the attorney fee award punishes petitioners after the fact for conduct they did not know was beyond the protected realm of their freedom of speech and, therefore, petitioners and others will be inhibited in the future exercise of their freedom of speech for fear of being "penalized" again. Even the most naive person would have known petitioners' conduct – obstructing access to a lawful enterprise and engaging in acts of assault and

harassment to prevent women who had expressed disinterest in petitioners' views from exercising the constitutional right to abortion – is not absolved by invoking the protections afforded by the First Amendment and article I, section 2. When a person oversteps the bounds of protected speech, civil and criminal liability may attach. (*Northeast Women's Center, Inc. v. McMonagle, supra,* 868 F.2d at pp. 1348-1350; cf. *Radich v. Goode,* 886 F.2d 1391, 1398 (3d Cir. 1989).)

This is precisely the kind of case in which attorney fees are appropriate. As stated in *Northeast Women's Center v. McMonagle, supra,* 889 F.2d at 477 where an attorney fee award was upheld under RICO by analogy to the federal Civil Rights Attorney Fee Award Act (42 USC § 1983 et seq.):[1]

> While defendants may have strong convictions against the wisdom or morality of women making a voluntary decision to obtain an abortion, under our Constitution and laws there is in this country no superior, dominant ruling class of citizens who may escape the consequences of their violent and lawless behavior. Neither those who believe strongly in the "right to life" nor

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[1] The analogy between the federal attorney fee statute and our state statute is apt. *Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles,* 23 Cal.3d 917, 934 (1979) recognized that "in framing the provisions of section 1021.5 the Legislature drew heavily upon the pre-*Alyeska* opinion (i.e., *Alyeska Pipeline Serv. Co. v. Wilderness Society,* 421 U.S. 240 (1975))," and that, accordingly, "such authorities . . . will often be helpful and reliable guides in interpreting the various provisions of the California statutes." See also on this same point, *Miller v. California Comm. on Status of Women,* 172 Cal.App.3d 837 (1985).

those who believe fervently in "freedom of choice" have any special immunity from the operation of the rule of law in our society.

Petitioners' argument that the award of attorney's fees against them treats them in a discriminatory manner *qua* labor union demonstrators is unpersuasive. They argue, as did the dissent in the appellate opinion below, that union members picketing their employers' businesses frequently have been enjoined from related conduct which unduly infringes on the employers' property rights, but no cases require individual union members to pay attorney fees incurred by the businesses in obtaining the injunctions. But attorney fees pursuant to Code of Civil Procedure section 1021.5, like attorney fees awarded pursuant to 42 U.S.C. § 1988, would not be warranted in an action to enjoin certain conduct of union members picketing their employer's business, even if the picketers' conduct included actions unprotected by the First Amendment. This is so because (1) injunctions obtained by employers do not necessarily confer a significant benefit upon the general public or a large class of persons, and (2) if employers champion only their individual property rights, the financial burden of litigation would not outweigh their personal stake in the matter. Hence, the analogy is, as the majority opinion stated, "inapposite."

More on point is this Court's holding that in a union member's suit against his union under the "free speech" provisions of the Labor-Management Reporting and Disclosure Act, it was within the equitable power of the federal courts to grant attorney fees against the union, since the plaintiff had conferred a substantial benefit on all the members of the union by vindicating their free

speech interests. *Hall v. Cole*, 412 U.S. 1 (1973). Because a court-ordered award of attorneys' fees in a suit under the free speech provision of the LMRDA promoted Congress' intention to afford meaningful protection for the rights of employees and the public generally, and because without provision of attorneys' fees an aggrieved union member would be unlikely to be able to finance the necessary litigation, *id.*, at 13, the Court held that the allowance of counsel fees was "consistent with both the [LMRDA] and the historic equitable power of federal courts to grant such relief in the interests of justice."

Similarly, the instant action resulted in the enforcement of an important right affecting the public interest and conferred a significant benefit on the general public or a large class of persons. Respondent was not defending its existence solely for a profit motive. Where an abortion provider is forced, directly or indirectly, to discontinue abortion services because of continued harassment, the ability of a woman to effectuate her abortion decision is compromised in violation of her rights. Without access to an abortion, the right to abortion is illusory. Respondent recognized this and explicitly sought injunctive relief to ensure that its patients had the continuing ability to obtain medical and abortion services. Hence, "[t]he interests of [respondent] and its clients, rendering and receiving reproductive medical care, are mutual and inseparable. This action was brought to protect both [respondent] and its patrons; consequently, it cannot be exclusively characterized as a self-serving, private dispute commenced by [respondent] to protect its own pocketbook." (*Planned Parenthood v. Aakhus, supra*, 14 Cal.App.4th at p. 173.)

II

THE DECISION BELOW UPHOLDS A NARROWLY DRAWN TIME, PLACE AND MANNER INJUNCTION ON PETITIONERS' CONDUCT AND IS CONSISTENT WITH MADSEN.

Petitioners misstate the holding of *Madsen v. Women's Health Center, Inc.*, 114 S. Ct. 2516 (1994). In *Madsen*, which also involved an injunction prohibiting anti-abortion protesters from demonstrating in certain places and in various ways outside a health clinic that performed abortions, this Court set forth and applied a standard for evaluating the constitutionality of content-neutral injunctions which restrict speech. Contrary to what petitioners' contend, however, nothing in *Madsen* mandates that a less restrictive prior injunction is a necessary prerequisite to a challenged injunction that creates a "buffer" or "speech free" zone. (Pet. at 16). The failure of a less restrictive order is simply a factor which "may" be considered in determining whether a content-neutral injunction burdens no more speech than necessary to accomplish a legitimate governmental interest. That the injunction challenged by petitioners satisfies *Madsen* is apparent from the appellate court's explanation after reconsidering upon remand from this Court its earlier opinion in light of *Madsen*:

> Here, the 20-foot speech-free zone, which is less restrictive than the buffer zone upheld in *Madsen v. Women's Health Center, supra*, was warranted in light of defendants' actions, including their violation of the temporary restraining order. The zone burdens the least speech necessary to protect access to the clinic and to reduce health risks to the patients by protecting the patients and medical staff from physical confrontations as they enter the clinic. *The small size*

> *of the zone and defendants' ability to congregate in the parallel three-foot strip ensures that anyone entering the clinic will hear the protesters' message and see any signs or pictures displayed by the demonstrators.* (italics added.)

(Pet. at 24a).

III

THE COURT BELOW UNDERTOOK AN INDEPENDENT REVIEW OF THE RECORD AND CORRECTLY FOUND THAT THE EVIDENCE JUSTIFIED THE INJUNCTION AND THE AWARD OF ATTORNEY FEES.

Petitioners misunderstand the meaning of "independent review." The appellate court was emphatic that, as it did before remand from this Court after *Madsen*, it had undertaken " 'an independent examination of the whole record' in order to make sure 'that the judgment does not constitute a forbidden intrusion on the field of free expression,' " (*Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499-501, 507-511 (1984)) (citation original). (Pet. at 4a). Having done so, the court below found that the evidence supported the judgment, and then proceeded to summarize that evidence "in the light most favorable to the judgment." *Id.* This petitioners find objectionable, claiming that viewing the evidence in a way that is favorable to the judgment violates the standard of independent review. (Pet. at 24). To bolster their argument they quote from *New York Times v. Sullivan*, 376 U.S. 254 (1964) about the need in a libel action against a public figure for a reviewing court to make an independent review of the record. (Pet. at 23-24).

To be sure, many libel defendants have tried to convert the independent review rule into a requirement of *de novo* review, i.e., one that disregards the fact finder's findings altogether. The Court, however, has refused to take that step. See *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688-89 (1989). In *Connaughton*, the Court held that the jury's credibility determinations must be accepted unless they are clearly erroneous. Whether the clearly erroneous standard also governs review of other subsidiary fact findings from which the jury infers actual malice has not been decided. See *id.* at 689-90.

What this means in practice for both California appellate courts and federal courts following the mandate of this Court, is that

> The independent review standard does not require the appellate court to discard or ignore the reasoned conclusions of the lower court. To the contrary, the good work of the lower court is often of great benefit to the appellate court, as is proven by the number of rulings affirmed, often on the basis of the same reasoning employed by the lower court. Independent review does not mean uninformed or entirely new review; appellate courts are not required to reinvent the wheel already constructed partially or fully by the lower court. [¶] Independent review does mean, however, the appellate court is not constrained to give the lower court's conclusions any particular weight. If the appellate court believes the lower court erred, it need find nothing more, subject to the independent requirement that the error be prejudicial. The appellate court need not find, for

> example, that the error is "clear" or "manifest." It is enough that the appellate court disagrees with the lower tribunal's conclusion, and the appellate court is thus free to substitute its judgment for that of the lower tribunal.

J. Clarke Kelso, *Special Report on California Appellate Justice: A Report on the California Appellate System*, 45 Hastings L.J. 433, 467 (1994).

What obviously occurred here is that the appellate court twice reviewed the record independently and addressed all of the issues raised by petitioners, including the claim that the evidence did not support the judgment. Petitioners disagree, so they argue that the Court must have failed to engage in an independent review, as if that is synonymous with reversal. But independent review does not mean appellate reversal, and saying so does not make it true.

IV

THE DECISION IN THIS CASE DOES NOT CONFLICT WITH THIS COURT'S DOCTRINE OF PROTECTED ADVOCACY.

Petitioners claim that the injunction against them in this case denies their free speech rights because it forbids them from "inducing, encouraging, securing or causing other persons to commit any of the [specified] acts." (Pet. at 26-28, 90a). They rely upon *National Organization for Women v. Operation Rescue*, 37 F.3d 646 (D.C. Cir. 1994) for their contention. In that case the U.S. Court of Appeals

for the D.C. Circuit found that use of the terms "encouraging" and "inducing" instead of *"inciting"* could be construed to proscribe "mere abstract advocacy of illegal sitins." *Id.* at 656.

In this case, however, the eight aforementioned "acts" which petitioners are enjoined from "encouraging" or "inducing" are so specific that it is difficult to imagine how mere "abstract advocacy" could mesh with them. How, for example, does one abstractly advocate that others "record license plate numbers of vehicles delivering or removing plaintiff's employees, agents, clients, visitors, or business invitees from [respondent's] premises"? (Pet. at 90a). Or how could mere abstract advocacy run afoul of the prohibition on "photographing or videotaping [respondent's] employees, agents, clients, visitors, or business invitees approaching, entering, or leaving [respondent's] premises"? *Id.* In other words, read in context, as must be done, the injunction herein which proscribes "encouraging" or "inducing" certain specific acts is indistinguishable from a prohibition on *"inciting"* the very same conduct. It is therefore unnecessary to order the replacement of the terms "encouraging" and "inducing" with the term "inciting" as was done in *National Organization for Women v. Operation Rescue, supra,* 37 F.3d at 658.

V

THE CALIFORNIA COURT OF APPEAL BASED ITS DECISION ON INDEPENDENT AND ADEQUATE STATE GROUNDS, SPECIFICALLY THE STATE CONSTITUTION'S RIGHT OF PRIVACY AND THE STATE STATUTE AUTHORIZING THE AWARD OF ATTORNEY FEES IN CASES CONFERRING A SIGNIFICANT BENEFIT UPON THE PUBLIC.

This Court long has held that it will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is both "independent" of the merits of the federal claim and an "adequate" basis for the court's decision. See, *e.g.*, *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Murdock v. City of Memphis*, 20 Wall. 590, 635-636 (1875). The starting point for determining whether an "independent" and "adequate" state ground exists, of course, is the state court opinion that accompanies the judgment. *Washington v. Chrisman*, 455 U.S. 1, 5 n.2 (1982); *Uhler v. American Fedn. of Labor-Congress of Indus. Orgs.*, 468 U.S. 1310, ___ (1984) ("The California Supreme Court ruled that the proposed initiative would violate both the Federal and State Constitutions, and a majority of this Court would probably conclude that there was an adequate and independent state ground for the state court's decision.") Beyond that, this Court may turn to other parts of the record, such as the trial court ruling, to determine if the judgment rests on independent and adequate state grounds. See *First National Bank v. Anderson*, 269 U.S. 341, 346 (1926); *Staub v. Baxley*, 355 U.S. 313, 318 (1958). Occasionally, this Court may examine state law and state precedents, particularly to determine the adequacy of the state ground. *Texas v. Brown*, 460 U.S. 730, 732 n.1 (1983)

(plurality opinion); *Ake v. Oklahoma*, 470 U.S. 68 (1985). On all three scores, it is beyond cavil that an independent and adequate state ground supports the appellate opinion in this case.

To begin with, the appellate court explained that its affirmance of the trial court's order creating an exclusion from the "speech free zone" served two interests:

> the property rights of the clinic and the privacy rights of clinic patients. Regarding the latter, *"[a]rticle I, section 1 of the California Constitution expressly makes the pursuit and obtaining of privacy an 'inalienable right.' The state right of privacy protects information about a citizen's participation in a medical procedure including abortion."* (Citation omitted) (*Italics* added.) (Pet. at 21a.)

Further, the trial court's order granting a permanent injunction against petitioners' harassment and interference with patients seeking medical advice about abortion from respondent clinic states, in relevant part:

> Because a woman's decision to terminate her pregnancy is one of the most private decisions imaginable and because it is protected by *both the United States and California Constitutions*, (*Roe v. Wade* [citation] (holding that the right of privacy, as guaranteed by the Constitution, encompasses a woman's right to decide whether to terminate her pregnancy); *Chico Feminist Women's Health Center v. Scully*, 208 Cal.App.3d 230, 241-42 (1989), and cases cited therein), the State has a compelling interest to ensure that a woman has the ability to effectuate her decision within the limits specified in *Roe*, and to do so with the least harassment possible. (*Italics* added.) (Pet. at 84a.)

Finally, the specific pages referred to by the trial court in its citation to *Chico Feminist Women's Health Center v. Scully, supra,* 208 Cal.App.3d at 241-42 make clear that the basis for the appellate opinion's affirmance of the order is an "independent" and "adequate" state ground:

> It is unclear whether the federal right protects citizens from invasions of their privacy by private citizens or whether the federal right guards only against state action. [Citations.] *However, our state privacy guaranty is broader than the federal privacy right* (*Committee to Defend Reproductive Rights v. Myers,* 29 Cal.3d 252, 263 (1981).) *Article I, section 1 of the California Constitution expressly makes the pursuit and obtaining of privacy an "inalienable right." The state right of privacy protects information about a citizen's participation in a medical procedure, including abortion.* (See *People v. Stockton Pregnancy Control Medical Clinic, Inc.,* 203 Cal.App.3d 255, 241 (1988); *Planned Parenthood Affiliates v. Van de Kamp,* 181 Cal.App.3d 245, 276-278 (1986); see also *Binder v. Superior Court,* 196 Cal.App.3d 893, 901 (1987); *Wood v. Superior Court,* 166 Cal.App.3d 1138, 1147 (1985); *Board of Medical Quality Assurance v. Gherardini,* 93 Cal.App.3d 669, 679 (1979).) *And it has been held the state privacy right protects against invasions of privacy by private citizens as well as the state.* (*Porten v. University of San Francisco,* 64 Cal.App.3d 825, 829 (1976), followed in *Park Redlands Covenant Control Committee v. Simon,* 181 Cal.App.3d 87, 98 (1986) [citing other authorities following *Porten].*) (*Italics* added.) *Id.*

Thus a review of the appellate and trial court orders herein and the numerous state authorities upon which they rely make clear that the bases for these decisions

was the "independent" and "adequate" state ground of article I, § 1 of the California Constitution: the right of privacy which is broader than its federal counterpart.

CONCLUSION

For all the foregoing reasons, Petitioners' request for a writ of certiorari should be denied.

Respectfully submitted,

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